

AMENDED IN SENATE AUGUST 15, 2011

AMENDED IN SENATE JULY 7, 2011

AMENDED IN ASSEMBLY MAY 27, 2011

AMENDED IN ASSEMBLY MAY 10, 2011

AMENDED IN ASSEMBLY APRIL 25, 2011

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 415**

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**Introduced by Assembly Member Logue**  
**(Principal coauthors: Assembly Members Chesbro, Pan, and**  
**V. Manuel Pérez)**

February 14, 2011

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An act to repeal and add Section 2290.5 of the Business and Professions Code, to repeal and add Section 1374.13 of the Health and Safety Code, to repeal and add Section 10123.85 of the Insurance Code, and to amend Sections 14132.72 and 14132.725 of the Welfare and Institutions Code, relating to telehealth.

### LEGISLATIVE COUNSEL'S DIGEST

AB 415, as amended, Logue. Healing arts: telehealth.

(1) Existing law provides for the licensure and regulation of various healing arts professions by various boards within the Department of Consumer Affairs. A violation of specified provisions is a crime. Existing law defines telemedicine, for the purpose of its regulation, to mean the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, and education using interactive

audio, video, or data communications. Existing law requires a health care practitioner, as defined, to obtain verbal and written informed consent from the patient or the patient's legal representative before telemedicine is delivered. Existing law also imposes various requirements with regard to the provision of telemedicine by health care service plans, health insurers, or under the Medi-Cal program, including a prohibition on requiring face-to-face contact between a health care provider and a patient for services appropriately provided through telemedicine, subject to certain contracts or policies. Existing law provides that health care service plans and health insurers shall not be required to pay for consultations provided by telephone or facsimile machines. Existing law provides that a willful violation of the provisions governing health care service plans is a crime.

This bill would delete the provisions regarding telemedicine as described above, and would instead set forth provisions relating to telehealth, as defined. This bill would require a health care provider, as defined, to, prior to the delivery health care via telehealth, verbally inform the patient that telehealth may be used and obtain verbal consent from the patient. This bill would provide that failure to comply with this provision constitutes unprofessional conduct. This bill would, *subject to contract terms and conditions*, ~~also set forth provisions for the payment of telehealth services by~~ *preclude* health care service plans and health insurers *from imposing prior to payment, certain requirements or to the manner of service delivery*. By changing the definition of a crime applicable to health care service plans, the bill would impose a state-mandated local program.

(2) Existing law prohibits a requirement of face-to-face contact between a health care provider and a patient under the Medi-Cal program for services appropriately provided through telemedicine, subject to reimbursement policies developed by the Medi-Cal program to compensate licensed health care providers who provide health care services, that are otherwise covered by the Medi-Cal program, through telemedicine.

This bill would, instead, prohibit a requirement of in-person contact between a health care provider and patient under the Medi-Cal program for any service otherwise covered by the Medi-Cal program when the service is appropriately provided by telehealth, as defined, and would make related changes.

(3) Existing law, until January 1, 2013, and to the extent that federal financial participation is available, authorizes, under the Medi-Cal

program, teleophthalmology and teledermatology by store and forward, as defined.

This bill would delete the repeal of the above-described authorization.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. This act shall be known, and may be cited, as the  
2 Telehealth Advancement Act of 2011.

3 SEC. 2. The Legislature finds and declares all of the following:

4 (a) Lack of primary care providers, specialty providers, and  
5 transportation continue to be significant barriers to access to health  
6 services in medically underserved rural and urban areas.

7 (b) Parts of California have difficulty attracting and retaining  
8 health professionals, as well as supporting local health facilities  
9 to provide a continuum of health care.

10 (c) Many health care providers in medically underserved areas  
11 are isolated from mentors, colleagues, and the information  
12 resources necessary to support them personally and professionally.

13 (d) It is the intent of the Legislature to create a parity of  
14 telehealth with other health care delivery modes, to actively  
15 promote telehealth as a tool to advance stakeholders' goals  
16 regarding health status and health system improvement, and to  
17 create opportunities and flexibility for telehealth to be used in new  
18 models of care and system improvements.

19 (e) Telehealth is a mode of delivering health care services and  
20 public health utilizing information and communication technologies  
21 to enable the diagnosis, consultation, treatment, education, care  
22 management, and self-management of patients at a distance from  
23 health care providers.

24 (f) Telehealth is part of a multifaceted approach to address the  
25 problem of inadequate provider distribution and the development  
26 of health systems in medically underserved areas by improving

1 communication capabilities and providing convenient access to  
2 up-to-date information, consultations, and other forms of support.

3 (g) The use of information and telecommunication technologies  
4 to deliver health services has the potential to reduce costs, improve  
5 quality, change the conditions of practice, and improve access to  
6 health care, particularly in rural and other medically underserved  
7 areas.

8 (h) Telehealth will assist in maintaining or improving the  
9 physical and economic health of medically underserved  
10 communities by keeping the source of medical care in the local  
11 area, strengthening the health infrastructure, and preserving health  
12 care-related jobs.

13 (i) Consumers of health care will benefit from telehealth in  
14 many ways, including expanded access to providers, faster and  
15 more convenient treatment, better continuity of care, reduction of  
16 lost work time and travel costs, and the ability to remain with  
17 support networks.

18 (j) It is the intent of the Legislature that the fundamental health  
19 care provider-patient relationship cannot only be preserved, but  
20 can also be augmented and enhanced, through the use of telehealth  
21 as a tool to be integrated into practices.

22 (k) Without the assurance of payment and the resolution of legal  
23 and policy barriers, the full potential of telehealth will not be  
24 realized.

25 SEC. 3. Section 2290.5 of the Business and Professions Code  
26 is repealed.

27 SEC. 4. Section 2290.5 is added to the Business and Professions  
28 Code, to read:

29 2290.5. (a) For purposes of this division, the following  
30 definitions shall apply:

31 (1) "Asynchronous store and forward" means the transmission  
32 of a patient's medical information from an originating site to the  
33 health care provider at a distant site without the presence of the  
34 patient.

35 (2) "Distant site" means a site where a health care provider who  
36 provides health care services is located while providing these  
37 services via a telecommunications system.

38 (3) "Health care provider" means a person who is licensed under  
39 this division.

1 (4) “Originating site” means a site where a patient is located at  
2 the time health care services are provided via a telecommunications  
3 system or where the asynchronous store and forward service  
4 originates.

5 (5) “Synchronous interaction” means a real-time interaction  
6 between a patient and a health care provider located at a distant  
7 site.

8 (6) “Telehealth” means the mode of delivering health care  
9 services and public health via information and communication  
10 technologies to facilitate the diagnosis, consultation, treatment,  
11 education, care management, and self-management of a patient’s  
12 health care while the patient is at the originating site and the health  
13 care provider is at a distant site. Telehealth facilitates patient  
14 self-management and caregiver support for patients and includes  
15 synchronous interactions and asynchronous store and forward  
16 transfers.

17 (b) Prior to the delivery of health care via telehealth, the health  
18 care provider at the originating site shall verbally inform the patient  
19 that telehealth may be used and obtain verbal consent from the  
20 patient for this use. The verbal consent shall be documented in the  
21 patient’s medical record.

22 (c) The failure of a health care provider to comply with this  
23 section shall constitute unprofessional conduct. Section 2314 shall  
24 not apply to this section.

25 (d) This section shall not be construed to alter the scope of  
26 practice of any health care provider or authorize the delivery of  
27 health care services in a setting, or in a manner, not otherwise  
28 authorized by law.

29 (e) All laws regarding the confidentiality of health care  
30 information and a patient’s rights to his or her medical information  
31 shall apply to telehealth interactions.

32 (f) *This section shall not apply to a patient under the jurisdiction*  
33 *of the Department of Corrections and Rehabilitation or any other*  
34 *correctional facility.*

35 SEC. 5. Section 1374.13 of the Health and Safety Code is  
36 repealed.

37 SEC. 6. Section 1374.13 is added to the Health and Safety  
38 Code, to read:

1 1374.13. (a) For the purposes of this section, the definitions  
2 in subdivision (a) of Section 2290.5 of the Business and Professions  
3 Code shall apply.

4 (b) It is the intent of the Legislature to recognize the practice  
5 of telehealth as a legitimate means by which an individual may  
6 receive health care services from a health care provider without  
7 in-person contact with the health care provider.

8 (c) No health care service plan shall require that in-person  
9 contact occur between a health care provider and a patient before  
10 payment is made for the covered services appropriately provided  
11 through telehealth, subject to the terms and conditions of the  
12 contract entered into between the enrollee or subscriber and the  
13 health care service plan, and between the health care service plan  
14 and its participating providers or provider groups.

15 ~~(d) For the purposes of payment for covered treatment or~~  
16 ~~services provided through telehealth, the health care service plan~~  
17 ~~shall not limit the type of setting where services are provided for~~  
18 ~~the patient or by the health care provider.~~

19 *No health care service plan shall limit the type of setting where*  
20 *services are provided for the patient or by the health care provider*  
21 *before payment is made for the covered services appropriately*  
22 *provided through telehealth, subject to the terms and conditions*  
23 *of the contract entered into between the enrollee or subscriber*  
24 *and the health care service plan, and between the health care*  
25 *service plan and its participating providers or provider groups.*

26 (e) The requirements of this subdivision shall also be operative  
27 for health care service plan contracts with the department pursuant  
28 to Article 2.7 (commencing with Section 14087.3), Article 2.8  
29 (commencing with Section 14087.5), Article 2.81 (commencing  
30 with Section 14087.96), or Article 2.91 (commencing with Section  
31 14089) of Chapter 7, or Chapter 8 (commencing with Section  
32 14200) of, Part 3 of Division 9 of the Welfare and Institutions  
33 Code.

34 ~~(f) Nothing in this section shall. Notwithstanding any other~~  
35 ~~provision, this section shall not~~ be interpreted to authorize a health  
36 care service plan to require the use of telehealth when the health  
37 care provider has determined that it is not appropriate.

38 SEC. 7. Section 10123.85 of the Insurance Code is repealed.

39 SEC. 8. Section 10123.85 is added to the Insurance Code, to  
40 read:

1 10123.85. (a) For purposes of this section, the definitions in  
2 subdivision (a) of Section 2290.5 of the Business and Professions  
3 Code shall apply.

4 (b) It is the intent of the Legislature to recognize the practice  
5 of telehealth as a legitimate means by which an individual may  
6 receive health care services from a health care provider without  
7 in-person contact with the health care provider.

8 (c) No health insurer shall require that in-person contact occur  
9 between a health care provider and a patient before payment is  
10 made for the services appropriately provided through telehealth,  
11 subject to the terms and conditions of the contract entered into  
12 between the policyholder or contractholder and the insurer, and  
13 between the insurer and its participating providers or provider  
14 groups.

15 ~~(d) For the purposes of payment for covered treatment or~~  
16 ~~services provided through telehealth, the health insurer shall not~~  
17 ~~limit the type of setting where services are provided for the patient~~  
18 ~~or by the health care provider.~~

19 *No health insurer shall limit the type of setting where services*  
20 *are provided for the patient or by the health care provider before*  
21 *payment is made for the covered services appropriately provided*  
22 *by telehealth, subject to the terms and conditions of the contract*  
23 *between the policyholder or contract holder and the insurer, and*  
24 *between the insurer and its participating providers or provider*  
25 *groups.*

26 ~~(e) Nothing in this section shall~~ *Notwithstanding any other*  
27 *provision, this section shall not* be interpreted to authorize a health  
28 insurer to require the use of telehealth when the health care provider  
29 has determined that it is not appropriate.

30 SEC. 9. Section 14132.72 of the Welfare and Institutions Code  
31 is amended to read:

32 14132.72. (a) For purposes of this section, the definitions in  
33 subdivision (a) of Section 2290.5 of the Business and Professions  
34 Code shall apply.

35 (b) It is the intent of the Legislature to recognize the practice  
36 of telehealth as a legitimate means by which an individual may  
37 receive health care services from a health care provider without  
38 in-person contact with the provider.

39 (c) In-person contact between a health care provider and a  
40 patient shall not be required under the Medi-Cal program for

1 services appropriately provided through telehealth, subject to  
2 reimbursement policies adopted by the department to compensate  
3 a licensed health care provider who provides health care services  
4 through telehealth that are otherwise reimbursed pursuant to the  
5 Medi-Cal program. Nothing in this section or the Telehealth  
6 Advancement Act of 2011 shall be construed to conflict with or  
7 supersede the provisions of Section 14091.3 of this code or any  
8 other existing state laws or regulations related to reimbursement  
9 for services provided by a noncontracted provider.

10 (d) The department shall not require a health care provider to  
11 document a barrier to an in-person visit for Medi-Cal coverage of  
12 services provided via telehealth.

13 (e) For the purposes of payment for covered treatment or  
14 services provided through telehealth, the department shall not limit  
15 the type of setting where services are provided for the patient or  
16 by the health care provider.

17 (f) Nothing in this section shall be interpreted to authorize the  
18 department to require the use of telehealth when the health care  
19 provider has determined that it is not appropriate.

20 (g) Notwithstanding Chapter 3.5 (commencing with Section  
21 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
22 the department may implement, interpret, and make specific this  
23 section by means of all-county letters, provider bulletins, and  
24 similar instructions.

25 SEC. 10. Section 14132.725 of the Welfare and Institutions  
26 Code is amended to read:

27 14132.725. (a) Commencing July 1, 2006, to the extent that  
28 federal financial participation is available, face-to-face contact  
29 between a health care provider and a patient shall not be required  
30 under the Medi-Cal program for teleophthalmology and  
31 teledermatology by store and forward. Services appropriately  
32 provided through the store and forward process are subject to  
33 billing and reimbursement policies developed by the department.

34 (b) For purposes of this section, “teleophthalmology and  
35 teledermatology by store and forward” means an asynchronous  
36 transmission of medical information to be reviewed at a later time  
37 by a physician at a distant site who is trained in ophthalmology or  
38 dermatology or, for teleophthalmology, by an optometrist who is  
39 licensed pursuant to Chapter 7 (commencing with Section 3000)  
40 of Division 2 of the Business and Professions Code, where the

1 physician or optometrist at the distant site reviews the medical  
2 information without the patient being present in real time. A patient  
3 receiving teleophthalmology or teledermatology by store and  
4 forward shall be notified of the right to receive interactive  
5 communication with the distant specialist physician or optometrist,  
6 and shall receive an interactive communication with the distant  
7 specialist physician or optometrist, upon request. If requested,  
8 communication with the distant specialist physician or optometrist  
9 may occur either at the time of the consultation, or within 30 days  
10 of the patient's notification of the results of the consultation. If the  
11 reviewing optometrist identifies a disease or condition requiring  
12 consultation or referral pursuant to Section 3041 of the Business  
13 and Professions Code, that consultation or referral shall be with  
14 an ophthalmologist or other appropriate physician and surgeon, as  
15 required.

16 (c) Notwithstanding Chapter 3.5 (commencing with Section  
17 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
18 the department may implement, interpret, and make specific this  
19 section by means of all-county letters, provider bulletins, and  
20 similar instructions.

21 (d) On or before January 1, 2008, the department shall report  
22 to the Legislature the number and type of services provided, and  
23 the payments made related to the application of store and forward  
24 telemedicine as provided, under this section as a Medi-Cal benefit.

25 SEC. 11. No reimbursement is required by this act pursuant to  
26 Section 6 of Article XIII B of the California Constitution because  
27 the only costs that may be incurred by a local agency or school  
28 district will be incurred because this act creates a new crime or  
29 infraction, eliminates a crime or infraction, or changes the penalty  
30 for a crime or infraction, within the meaning of Section 17556 of  
31 the Government Code, or changes the definition of a crime within  
32 the meaning of Section 6 of Article XIII B of the California  
33 Constitution.